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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

12 BAYKEEPER, INC., d/b/a SAN
13 FRANCISCO BAYKEEPER, a
California non-profit corporation,

14 Plaintiff,

15 v.

16 CITY OF SOUTH SAN FRANCISCO,
a California municipal corporation,

17 Defendant.
18

Case No. 10-00921 SBA

**NOTICE OF MOTION AND JOINT
MOTION FOR TERMINATION OF
CONSENT DECREE**

Date: June 4, 2013
Time: 1:00 p.m.
Courtroom: 1

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NOTICE OF MOTION

3 PLEASE TAKE NOTICE that, pursuant to Federal Rules of Civil Procedure,
4 Rule 60 and the terms of this Court's Consent Decree entered on May 16, 2011, on
5 June 4, 2013, at 1:00 p.m., or as soon as thereafter as the matter may be heard in the
6 above-entitled Court, located at 1301 Clay Street, 4th Floor, Courtroom 1, Oakland,
7 California 94612, the Honorable Saundra Brown Armstrong presiding, Plaintiff
8 Baykeeper, Inc., d/b/a San Francisco Baykeeper and Defendant City of South San
9 Francisco will move, and hereby do move, the Court to terminate the Consent
10 Decree in this matter and dismiss the case.

12 DATED: April 5, 2013 MEYERS, NAVE, RIBACK, SILVER &
13 WILSON

By: /s/Gregory J. Newmark
Gregory J. Newmark
Attorneys for Defendant
City of South San Francisco

20 | DATED: April 5, 2013 SAN FRANCISCO BAYKEEPER

By: /s/ Jason Flanders
Jason Flanders, Staff Attorney

1 **I. INTRODUCTION AND BACKGROUND**

2 Plaintiff Baykeeper, Inc., d/b/a San Francisco Baykeeper (“Baykeeper”) and
 3 Defendant City of South San Francisco (“City”) bring this Joint Motion For
 4 Termination Of Consent Decree pursuant to Federal Rules of Civil Procedure, Rule
 5 60 and the terms of this Court’s Consent Decree entered on May 16, 2012,
 6 requesting that this Court enter an order terminating the Consent Decree, a copy of
 7 which is attached hereto as Exhibit “A,” and dismissing the case.

8 On March 4, 2010, Baykeeper filed the complaint herein against the City,
 9 alleging violations of the federal Clean Water Act by the City in connection with its
 10 operation of the City’s sewage collection system. The Consent Decree is the result
 11 of a settlement reached between the parties. Section VI of the Consent Decree
 12 authorizes the parties to move the Court to terminate the Consent Decree if the City
 13 has no more than 4 Sanitary Sewer Overflows (SSOs) per 100 miles of sewer from
 14 the City Collection System in one calendar year, followed by no more than 3 spills
 15 per 100 miles of sewer the following year. The City has met these criteria and
 16 therefore this Motion should be granted, the Consent Decree terminated, and the
 17 case dismissed.

18 **II. ARGUMENT**

19 On May 16, 2010, this Court entered the Consent Decree. The Consent
 20 Decree has a 5-year term, but under Section VI, Paragraph 18, the Consent Decree
 21 may terminate early if “the City has no more than four SSOs per 100 miles of sewer
 22 from the City Collection System in a given calendar year followed by no more than
 23 three SSOs per 100 miles of sewer in the succeeding calendar year.” See Ex. “A”
 24 [Consent Decree] at ¶ 18. The Consent Decree provides that if the aforementioned
 25 spill goals are met, then the City “shall initiate early termination by submitting a
 26 letter to Baykeeper demonstrating that it has satisfied the conditions of early
 27 termination set forth” in Paragraph 18. Ex. “A” [Consent Decree] at ¶ 18. The City
 28 submitted a letter to Baykeeper on February 21, 2013, notifying Baykeeper that it

1 had met the SSO requirements for early termination under Paragraph 18 of the
 2 Consent Decree and submitting documentation demonstrating same. See Ex. "B"
 3 [City's February 21, 2013 Early Termination Letter]. As the City's letter shows, the
 4 City had 3 spills per 100 miles of pipe in Calendar Year 2011, followed by 3 spills
 5 per 100 miles of pipe in Calendar Year 2012 (*id.*), and, thus, the City met the
 6 Consent Decree's requirements for early termination.

7 Baykeeper reviewed the City's request and the parties hereby stipulate that
 8 the City has indeed achieved the spill goals allowing for early termination of the
 9 Consent Decree. See Ex. "C" [Baykeeper's February 26, 2013 Response to City].
 10 The parties further stipulate that the judgment "has been satisfied, released, or
 11 discharged" and termination of the Consent Decree and dismissal of this case is
 12 proper. Fed. R. Civ. Proc., Rule 60(b); *SEC v. Randolph*, 736 F.2d 525, 528 (9th
 13 Cir. 1984).

14 Furthermore, this Court retained jurisdiction to enforce the terms and
 15 conditions of the Consent Decree. Consent Decree, ¶ 83. A proposed order, filed
 16 concurrently herewith, would dismiss this case, terminate the Court's jurisdiction
 17 under the Consent Decree, and discharge the City of any and all present and future
 18 obligations arising thereunder.

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1 **III. CONCLUSION**

2 For the reasons set forth above, the parties jointly move this Court to enter the
3 proposed order to terminate the Consent Decree and dismiss this case.

5 DATED: April 5, 2013

MEYERS, NAVÉ, RIBACK, SILVER &
6 WILSON

8 By: /s/Gregory J. Newmark

9 Gregory J. Newmark
10 Attorneys for Defendant
11 City of South San Francisco

12 DATED: April 5, 2013

SAN FRANCISCO BAYKEEPER

14 By: /s/Jason Flanders

15 Jason Flanders
16 Attorney for Plaintiff
17 San Francisco Baykeeper

ORDER

2 On April 5, 2013, Plaintiff Baykeeper, Inc. and Defendant City of South San
3 Francisco jointly moved this Court for termination of the Consent Decree in
4 *Baykeeper, Inc. v. City of South San Francisco*, Civ. No. 10-00921 SBA. The
5 Court, having considered the papers, and good cause appearing, rules as follows:

6 Plaintiff's and Defendant's Joint Motion For Termination Of Consent Decree
7 is hereby GRANTED and this case is DISMISSED. The Consent Decree in this
8 matter, and the Court's continuing jurisdiction, are hereby TERMINATED.

9 The parties shall bear their own attorneys' fees and costs associated with this
10 Motion.

12 IT IS SO ORDERED.

14 | DATED: 4/16/13

UNITED STATES DISTRICT COURT JUDGE
SAUNDRA BROWN ARMSTRONG